THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETITION No. 23699 of 2006.

DATED: 15-11-2006

Between:

M.Srinivasulu and others.

…Petitioners

and

The Regional Joint Commissioner,
Guntur Zone, Endowments Department,
Guntur and others.

…Respondents.

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P.No. 23699 of 2006.

Oral order:

The 4th respondent has issued an auction notification proposing grant of leasehold rights of agricultural land in an extent of Ac.11-84 cents in Sy.No.333 of Ponduru Village, Tangutur Mandal, Prakasam District, which belong to the 4th respondent's endowment.

The petitioners claim to have been cultivating tenants of the land since long. In 2003, the concerned Assistant Commissioner, the 2nd respondent declared the petitioners to be landless poor persons, as a consequence of which they became entitled to the benefits available to the landless poor persons under Section 82 of the Andhra Pradesh Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act').

However, the 1st respondent by an order dated 26-8-2006 *suo motu* took up enquiry into the certification of the petitioners as landless poor persons by the 2nd respondent and cancelled the orders of the 2nd respondent declaring the petitioners to be landless poor persons. A notice in Form-I under Rule 5 of the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Lease of Agricultural Lands Rules, 2003 (for short 'the Rules') was also issued to the petitioners to vacate the lands in question as their leases stood determined by the operation of Section 82 of the Act while informing them that the lands are proposed to be leased out as per Rules. The petitioner did not handover possession pursuant to the Form-I notice

issued.

The petitioners now allege that consequent on the auction to be conducted on 20-11-2006 the highest bidders or those persons who succeed in the auction and are granted lease, would be put in possession by forcibly evicting the petitioners.

The petitioners assert that the respondents cannot evict them except by following the substance and procedure mandated in Section 83 and 84 of the Act.

The question is whether after issuing a notice in Form-I referable to Rule 5 of the Rules, the respondents are obligated to also follow the procedure under Section 83 of the Act to treat the petitioners as encroachers and to pass an order for their eviction and if they fail to vacate the encroached land and only thereafter seek recourse of the coercive process under Section 84 of the Act. In considering the petitioners contention in this behalf, it requires to be noticed that qua Section 82 of the Act any lease of Agricultural land belonging to or given or endowed for the purpose of any institution or endowment, subsisting on the date of commencement of the Act, stands cancelled unless the lands are held by a person who is a landless poor person. As the petitioners had no valid subsisting lease granted to them in a manner known and recognized by the Act or the relevant Rules, the petitioners were declared to be not landless poor persons. If they are not landless poor persons, the lease in their favour, if any, would also stand cancelled by the legislative declaration in Section 82 of the Act.

To effectuate the legislative declaration of Section 82 of the Act. Rule 5 of the Rules enables the issuance of a notice in Form-I sensitizing persons in occupation of the endowment land without a valid lease or a lease which stood determined by operation of Section 82 of the Act that the lands are proposed to be leased out as per the

Rules and calling upon such persons to forthwith handover possession of the land. Rule 5 is also to the effect that should a person fail to handover possession of the land, he shall be evicted invoking the provisions under Sections 84, 85 and 86 of the Act (by employing the coercive process of the State), treating him as an encroacher in the order passed under Section 83 (4) of the Act.

The phrase "treating him as an encroacher in the order passed under Section 83 (4) of the Act" cannot be interpreted to mean that an order must be passed after the process under Section 83 of the Act since when an order is passed under Section 83 (4) of the Act, there is already a decision (declaring a person subjected to the process under Section 83 of the Act) that the person is an encroacher. In the interactive context of Sections 82, 83, 84, 85 and 86 and Rule 5 and in the general setting of the Rules, the conclusion is irresistible that Rule 5 of the Rules means that in the issuance of a notice in Form-I there is already an assumption that the notice is to a person who is not entitled to the benefits under Section 82 of the Act as a landless poor person. He is therefore, an encroacher, since the lease stood determined by the legislative declaration in Section 82 of the Act. Rule 5 of the Rules, therefore, in an abridged form replicates the process of Section 83 but without its procedural and technical rigor. In case a person fails to handover possession of the land after issuance of the notice in Form-I, Rule 5 requires that such person should be evicted as though he was an encroacher declared as such under Section 83 (4) of the Act and should be evicted by employing the coercive processes under Section 84, 85 and 86 of the Act. On a true and fair construction of the provisions of Sections 82 to 86 of the Act read with Rule 5 and Form-I the above construction appears inescapable.

A learned Single Judge of this Court in ***N.Mallakanti v. Chennakesava Swamy Temple, Gargeyapuram village, Kurnool***[1] recorded the same conclusion on similar analysis of the statutory

provisions. In paragraph 10 of the judgment, it was held:

> "A reading of the above rule would show that a leaseholder shall have to be issued notice in Form No.I informing him that the lease stood cancelled under Section 82 (1) of the Act, the leasehold rights in respect of the lands are proposed to be leased out as per the rules and calling upon the tenant to forthwith handover possession of the lands. The tenants shall also be informed that if he fails to handover possession within 30 days (as seen from Form No.I) he shall be evicted invoking the provisions of Sections 84, 85 and 86 of the Act treating the tenant as an encroacher under Section 83 (4) of the Act. By Section 82 (1) the Law treats a lease as cancelled and the rules enable the Executive Officer of the Temple to take possession in accordance with Sections 84 to 86. Be it noted under Sections 84 and 85 it is competent for the Assistant Commissioner to evict a person in possession of the temple property with the aid of the police. Therefore where the agricultural lease stands cancelled the temple is required to take possession by serving Notice in Form No. I read with Rule 5 (1) of the Rules. The Temple or the Assistant Commissioner are not required to approach the jurisdictional Deputy Commissioner of Endowments for an order to remove the encroachment. By reason Rule 5 (1) the Law introduced as fiction to the effect that a tenant who is not a landless poor person, and who fails to handover possession within 30 days after receipt of the Notice in Form No.I, is deemed to be an encroacher and without any further order, he can be evicted or removed with police aid under Sections 84 and 85 of the Act."

Sri Raghu, the learned counsel for the petitioners would urge that the decision in ***N.Mallakanti*** requires reconsideration. In the considered view of this court and in view of the analysis of the provisions of the Act and of the Rules as hereinabove, this Court is in respectful agreement with the analysis of the relevant provisions in ***Mallakanti***.

For the aforesaid reasons, this Court finds no justification for interdicting the auction process of the lands of the 4th respondent endowment institution scheduled on 20-11-2006 pursuant to the auction notification issued by the 4th respondent, is impugned herein. The 2nd respondent is at liberty to evict the petitioners if they fail to vacate the lands and handover possession, by employing powers available under Section 84 (1) of the Act.

The petitioners assert that there is a standing eucalyptus plantation in the land and they should be permitted to cut and take away the said plantation. As the petitioners have no valid lease of the land of the 4th respondent endowment since recent memory but have continued in the land either on account of the negligence or abdication of functions by endowment officials, this court cannot under the facade of a mandamus abet such depredation of endowment property and enable the petitioners to cut away the eucalyptus plantation.

The petitioners are however, at liberty to represent to the respondents and if the respondents have any discretion in the matter and within the limits of the spectrum of discretion available, the respondents are at liberty to consider any such representation made.

The writ petition is dismissed at the admission stage. There shall be no order as to costs.

GODA RAGHURAM, J

15th November, 2006.
GRR

[1] 2004 (2) ALD 148